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July 12, 1996

**Via Messenger**

Cynthia N. Kawakami  
Associate Regional Counsel  
U.S. Environmental Protection Agency - Region 5  
200 West Adams Street, 29th floor  
Chicago, Illinois 60604

Re: Conservation Chemical Company of Illinois, Inc.  
Superfund Site, Gary, Indiana  
Docket Number V-W-96-C-337

Dear Ms. Kawakami:

On behalf of K.A. Steel Chemicals, Inc. ("KAS"), this letter is in response to the June 12, 1996 Federal Register notice (61 Fed. Reg. 29754) wherein the United States Environmental Protection Agency ("U.S. EPA") invited comments to the proposed *de minimis* settlement in connection with the Conservation Chemical Company of Illinois, Inc. ("CCCI") Site, located in Gary, Indiana ("the Site").

Initially, KAS concurs with the comments that have been submitted by Carl Helmstetter on behalf of certain potentially responsible parties ("PRPs"), including KAS. Those comments reiterate informal comments submitted in 1995 by various members of the 6500 Industrial Highway Group ("the Group"), in response to an earlier draft Administrative Order by Consent apparently sent by U.S. EPA on March 28, 1995 to one of the Group's representatives. We wish to clarify, however, that KAS has not been a member of the 6500 Industrial Highway Group, which was formed by certain recipients of a Unilateral Administrative Order ("UAO") issued by U.S. EPA in 1985. KAS did not participate in the Group's response actions or subsequent activities. KAS also did not receive a copy or other notice of the 1995 draft order for comment, despite U.S. EPA's apparent listing of KAS as a major PRP in that draft order. KAS consequently did not provide comments to that draft order, and did not participate in the comments submitted by various Group members, whose comments are now being reiterated, to the extent applicable, in response to the currently proposed *de minimis* settlement. KAS's first notification of the proposed *de minimis* settlement was our receipt of your letter dated February 14, 1996, which included KAS as an addressee on the Major PRP Mailing List for the CCCI Site and which enclosed materials relating to the proposed settlement.

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In the notice of settlement offer and the proposed Administrative Order on Consent ("proposed AOC"), U.S. EPA indicates that eligibility for a *de minimis* settlement is based upon a party's contribution of "less than 1% of the hazardous substances sent to the Site", as determined by U.S. EPA's Generator Ranking Summary Report. See proposed AOC, ¶ IV.17 and Appendix C. This generator ranking, based on "waste-in" records of incoming transactions, is essentially the same ranking as originally developed by U.S. EPA in 1986. In response to this generator ranking, KAS agrees with other commenting parties:

1. that U.S. EPA's current "waste-in" information is based only on undifferentiated waste volume allegedly sent to the site, without reflecting at all the substantial amounts of acid and cyanide removed during the prior clean-up phase;
2. that the presence of organic materials at the Site will likely dictate the scope and cost of subsequent remedial action, particularly potential groundwater remedies;
3. that U.S. EPA is consequently making *de minimis* settlement offers to certain generators of organic materials who may not be eligible for such a settlement under section 122(g)(1)(a) of CERCLA; and
4. that subsequent remediation costs may be divisible from the costs of prior action taken primarily in response to harm threatened by the presence of acid and cyanide wastes.

In addition to U.S. EPA's failure to account for changes in site conditions and divisibility of harm, KAS believes that U.S. EPA's generator ranking, and thus its designation of *de minimis* parties, is flawed for other reasons. U.S. EPA's generator ranking was developed solely on the basis of incoming transactions, without any regard for whether such transactions constituted disposal of waste, as opposed to purchase and delivery of commercial product, and without regard for the impact of outgoing transactions from the Site. Records of "waste-in" transactions, like "waste-out" transactions, consist primarily of bills of lading, as opposed to waste manifests. In some cases, the bills of lading for incoming transactions indicate delivery of spent waste material, but in other cases they indicate sales of commercial product to CCCI. Moreover, in some cases, waste-in and waste-out records were incorrectly combined within the same files.

Regarding outgoing transactions, U.S. EPA did not identify such records as being available for review as part of the transactional records for the Site. Furthermore, as evidence of U.S. EPA's disregard of potentially relevant "waste-out" information, U.S. EPA labeled records of outgoing transactions in its files as "non-transactional" and has indicated on various

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occasions that such records are not relevant to generator rankings. EPA did not produce records of outgoing transactions, unless such "waste-out" records were specifically requested.

U.S. EPA's failure to consider information distinguishing bills of lading and invoices for incoming deliveries of commercial product from those of waste shipments, and its disregard of relevant information in outgoing bills of lading, result in volumetric generator rankings that are grossly in error. These errors affect those parties, particularly KAS, which can substantiate that the material they delivered to the Site was for sale of a commercial grade product which the Site operator resold and distributed directly to its customers, without unloading or other handling at the Site. Specifically, KAS sold ferric chloride, a wastewater treatment chemical, to CCCI during time periods when CCCI did not manufacture ferric chloride in sufficient quantities to satisfy demands of its own customers. (In contrast, several waste generators sent or sold spent pickle liquor, *i.e.*, ferrous chloride, to CCCI as a principal raw material in its production of ferric chloride at the Site.) The effect of the errors in generator ranking are particularly significant for KAS, which U.S. EPA ranked as sixth out of 224 parties, and attributed with sending 1,730,137.16 gallons to the Site, with an overall volumetric share of 6.2159%.

There are several sources of documentary and testimonial evidence not considered by U.S. EPA that support KAS' position that it sold a commercial grade chemical product at a fair market commercial price to CCCI, which then distributed the product from KAS' plant directly to customers of CCCI. KAS referenced this evidence in its November 4, 1994 response to U.S. EPA's general notice letter, including information from prior court proceedings concerning these issues. Among the available documentary evidence, bills of lading from the waste-in and waste-out transactions can be matched in pairs to show that a shipment purchased by CCCI F.O.B. at KAS' plant was, in turn, shipped directly in the same vehicle to a CCCI customer. This evidence supports the conclusion that KAS did not "arrange for disposal or treatment" of any product, regardless of whether that product may be defined as a "hazardous substance". Attached is a summary of selected "waste-in" and "waste-out" transactions that are matched based on the details recorded in the bills of lading (*e.g.*, shipment date/time, truck number, driver name, shipment weight, mileage, etc.), along with copies of the bills of lading and related invoices for those incoming and outgoing transactions. These matched transactions are merely representative, showing various customers to which CCCI sold product after purchase from KAS. While such evidence also may support KAS' defense to liability in connection with the Site, this information is submitted here to identify the problem with EPA's stated basis for eligibility for the *de minimis* settlement.

Based upon the foregoing information, it is arbitrary, capricious and unreasonable for U.S. EPA to assume that all incoming bills of lading represent arrangement for disposal of hazardous substances, subject to liability under CERCLA, and to ignore evidence that CCCI bought and resold commercial grade chemical product. This information, even solely with respect to KAS due to the large volume attributed to it, discredits U.S. EPA's Generator

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Ranking Summary Report and, consequently, certain determinations of *de minimis* eligibility made on the basis of that ranking. Finally, if it is deemed liable at all for response costs in connection with the Site, on the basis of this information, KAS should be eligible for *de minimis* settlement of its liability.

The foregoing information should therefore be considered in any *de minimis* settlement that may be approved.

Very truly yours,

MAUCK, BELLANDE & CHEELY

A handwritten signature in cursive script, appearing to read "Mark Sargis".

Mark Robert Sargis

MRS:lm1

Enclosure

cc: Matt Koupal

S:CCC/Kawakami.L4